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Total Number of Pages in This Submission 80

Application Number	09/837,094
Filing Date	April 18, 2001
First Named Inventor	Sheppard, James M. Jr.
Art Unit	1771
Examiner Name	Befumo, Jenna-Leigh
Attorney Docket Number	3129

ENCLOSURES (Check all that apply)

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Firm Name	Dougherty, Clements, Hofer & Bernard		
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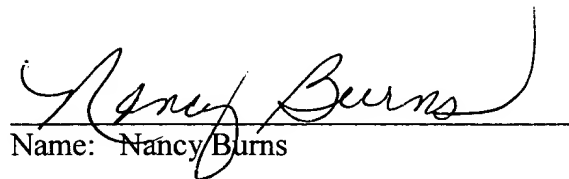
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Docket: 3129

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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF
PATENT APPEALS AND INTERFERENCES

In re Application of:

Sheppard
Serial No.: 09/837,094
Filed: April 18, 2001

For: JACQUARD OR DOBBY
WOVEN TEXTILE WITH
GRAPHIC IMPRESSION AND
A METHOD OF MAKING THE
SAME

Group Art Unit: 1771
Examiner: Befumo, Jenna-Leigh
Appeal No.:

Commissioner for Patents
P.O. Box 1450
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BRIEF OF APPELLANTS

This is an appeal from the final rejection of the Examiner dated August 11, 2004, rejecting Claims 21-27, all claims currently pending in the case. The Applicant files this Appeal under 37 C.F.R. § 41.31(a), having had all claims twice rejected. The requisite fee set forth in 37 C.F.R. § 41.20(b) was presented on December 23, 2004.

REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))

Inventor James M. Sheppard has assigned all his rights and interests in the current invention to Devant Ltd., a North Carolina Corporation. As such, Devant Ltd. is the real party in interest in this case. Mr. Sheppard is the President of Devant Ltd.

RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(1)(ii))

Related Application Serial No. 09/747,529 entitled JACQUARD WOVEN TEXTILE WITH GRAPHIC IMPRESSION AND A METHOD OF MAKING THE SAME, filed on December 22, 2000, was previously presented to the Board in an Appeal Brief filed on April 23, 2003. In a decision dated July 29, 2004, the Board reversed the Examiner's previous rejection of the claims therein and affirmed the Applicant's position regarding the Examiner's rejection. A copy of the Board's decision in the related Application Serial No. 09/747,529 is included in the Related Proceedings Appendix.

After remand, the Examiner again rejected Related Application 09/747,529. A second appeal was then immediately filed for Application 09/747,529, the claims having been twice rejected. The second appeal is currently pending.

STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(1)(iii))

The application was filed on April 18, 2001, and is a continuation-in-part of U.S. Serial No. 09/747,529, which itself claimed priority under 37 C.F.R. § 1.78(a)(4) of U.S. Provisional Application No. 60/173,275 filed on December 28, 1999. This application was originally filed with 20 claims of which two (2) were independent claims (Claims 1, and 16).

The Examiner issued a restriction requirement, and an election was made with traverse to prosecute the invention of claims 1-15. Claims 1-16 were withdrawn from consideration. All of the claims 1-15 were rejected in the Examiner's first Office Action of October 4, 2002. In response, the Applicant cancelled claims 1-15 in favor of new claims 21-28. Claim 21 was the only independent claim added.

In the subsequent Office Action of April 22, 2003, which was made final, the Examiner rejected all claims 21-28.

An Amendment After Final Rejection was filed on July 22, 2003.

A Request for continued Examination was filed on September 22, 2003, as well as a Preliminary Amendment, amending independent claim 21, and canceling dependent claim 28.

In the Office Action dated February 18, 2004, the Examiner rejected claims 21-27. A response was filed on May 18, 2004, amending independent claim 21.

In the subsequent Office Action of August 11, 2004, which was made final, the Examiner again rejected all claims 21-27.

An amendment responding to the Final Rejection and asking for reconsideration was filed on September 27, 2004. In the Examiner's response dated October 15, 2004, it was stated that this amendment was considered, but was found unpersuasive.

The status of the claims is as set out in Examiner's Final Rejection dated August 11, 2004 and is as follows:

Allowed claims—none

Claims objected to—none

Claims 16-20—withdrawn from consideration

Claims rejected—21-27.

STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(1)(iv))

An amendment responding to the Final Rejection and asking for reconsideration was filed on September 27, 2004. In the Examiner's response dated October 15, 2004, it was stated that this amendment was considered, but was found unpersuasive.

SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))

In the weaving of terry toweling, three series of yarns are employed: (a) pile warp which produces the loops for the pile surface (b) ground warp from which the pile warp projects and (c) weft which binds the two warps together.

Printing processes on dobby fabrics have been limited to preprinting the warp filaments with an elongated vertical pattern such that when woven, an article with more than two colors can be achieved. This process requires elaborate computer controlled printing onto the filaments, and very precise monitoring of the weaving process. Printing a pattern post-weave on an article has been employed in dobby situations, but this results in an article that is largely limited to a single color on the nonprinted side of the article. Printing on the reverse side of the dobby article is largely prohibited due to the likelihood that the separately printed images on opposite sides of the article will bleed through the article and disfigure the images on both printed sides. Post printing also has the undesirable side effect of decreasing the absorbency of the towel.

Applicant has recognized the deficiencies of both the weaving process and the traditional printing process and has created the novel "Edge® Towel." The claimed article employs dobby weaving to create an article with a central light colored area, surrounded by a dark border. The reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament

process. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the applicant to apply the printed image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(37 C.F.R. § 41.37(c)(1)(vi))

The Examiner has rejected claims 21-27 under 35 U.S.C. §103(a) as being unpatentable over Hobson (U.S. Pat. No. 4,259,994), in view of Carpenter et al. (U.S. Pat. No. 5,983,952). The Examiner has rejected claims under 35 U.S.C. §103(a) as being unpatentable over Sherrill et al. (U.S. Pat. No. 3,721,273) in view of the Applicant's admissions. Therefore, the issues to be decided in this appeal are the following:

1. It is the Examiner's position that Hobson discloses a patterned fabric comprising a printed design that can be woven on a dobby loom, with a structure corresponding to that claimed by the Applicant, such that the final product will be blue with gold floral sections on one side, and gold with blue floral sections on the reverse side, with the floral sections being produced by printing on the warp yarns prior to weaving. The Examiner further states that Carpenter et al. disclose attempts to incorporate printed patterns onto woven fabrics to create unique and distinctive appearances. The Examiner claims that it would be obvious to one of ordinary skill in the art to choose various print designs, as well as choose where to place the printed image on the Hobson product to create various printed products that are visually and aesthetically pleasing to consumers.

2. It is the Examiner's position that Sherrill et al. disclose a high sheen terry towel with a printed design on one side. The printed pattern is applied to the cut pile. The Examiner combines this with statements made in the Applicant's specification, and concludes that it would be obvious to one of ordinary skill in the art to use the multicolored

woven dobby terry cloth taught in the application as the terry towel in the invention of Sherrill et al., since terry towels made from dobby looms with a different color yarns are well know.

ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))

Issue 1—The rejection of Claims 21-27 under 35 U.S.C. §103(a) as being unpatentable over Hobson (U.S. Pat. No. 4,259,994) in view of Carpenter et al. (U.S. Pat. No. 5,983,952).

Hobson discloses printing on unwoven side-by-side yarns certain desired patterns in order to make two separate towels. The two towels are side-by-side on the loom. The looms produce a towel with a floral pattern, and a second towel of a second color having the same floral pattern.¹ The color schemes remain the same on the reverse side of each towel², or the reverse side can be ecru or bleached.³ Hobson teaches away from using a Jacquard loom. The Examiner has continuously mischaracterized this reference in claiming that a single towel having a reversed color scheme on opposite sides is created.

Carpenter et al. disclose applying a printed pattern to jacquard woven fabric. A pattern is printed onto unwoven side-by-side yarns. Registration marks are also printed to synchronize the woven pattern to the printed pattern. Those yarns are then wound on a beam and then the beam is taken to a loom where the textile is woven. Precise control over the tension of the yarns is required to accurately reproduce the image preprinted on the yarns when the yarns are woven into the finished textile article.

The Examiner sets forth many of the features of Hobson and Carpenter et al., and concludes that it would have been obvious to one of ordinary skill in the art to create

¹ U.S. Pat. No. 4,259,994 at col. 3, lines 33-35.

² Id. at col. 2, lines 18-25.

³ Id. at col. 2, lines 48-55.

towels by combining woven patterns with printed patterns as taught in Carpenter, et al. in the fabric of Hobson, which teaches creating towels with differed colored sections combined with printed patterns to create towels with more intricate designs at a lower cost due to the use of print to create a towel that is visually and texturally appealing due to the printed images, colors, and weave structure. This rejection is respectfully traversed for the following reasons.

Issue 1a. CLAIM 21 (37 C.F.R. § 41.37(c)(1)(vii) subheading)

Claim 21 is the only independent claim. Attached Table 1 sets forth the elements of claim 21 and views this with respect to the rejection of Hobson vs. Carpenter et al. Claim 21 starts by calling for weaving a towel on a dobby loom using at least two different colors. Hobson teaches using tappet or dobby looms in column 2, line 18. Carpenter et al., on the other hand, utilize a jacquard loom as item 26. It is unclear how the Examiner intends to combine these references since Hobson teaches away from using a jacquard loom⁴ instead utilizing a dobby loom, and Carpenter teaches using a jacquard loom. These teachings are like oil and water and not meant to be mixed.

Claim 21 calls for “a border having a first color [that] is woven adjacent each edge of said towel, on one side thereof...”⁵ Neither Hobson nor Carpenter has this feature. The Examiner notes that Hobson has a product which can have blue floral “borders” on one side and gold floral “borders” on the opposite side. However, these are not borders. These are merely stripes. A border is something that goes continuously around the entire edge of the product, as clearly set forth in Claim 21. Claim 21 states that the border is adjacent “each edge”. It is clear that the floral stripes of Hobson are only adjacent two edges, but are not adjacent the third and fourth edge of a two-dimensional product. Furthermore, there is no way one skilled in the art can modify Hobson or Carpenter and place a “border” on all edges, without totally ignoring the teachings of these references.

⁴ Id. at col. 2, lines 18 et seq.

⁵ See Claim 21 of Patent Application.

Claim 21 continues by stating that a border having a second color is adjacent each edge of the towel on its other side. Again, neither Hobson nor Carpenter has this for the same reason as set forth above, i.e., Hobson/Carpenter teaches stripes, but not borders adjacent “each edge” of the towel.

Claim 21 continues by stating that the towel has a central area within the borders on both sides of the towel. While there is central area in any two-dimensional product, this central area claimed in claim 21 must be within the borders. The lack of borders by both Hobson/Carpenter makes the location of the central area on the towel unclear to those skilled in the art.

Claim 21 continues by stating that the central area on one side is in a first color, while the central area on the other side is in a second color. Neither Hobson nor Carpenter et al. teach that the color on a towel is such that the central area on a first side and the borders on the second side are of one color, while the central area of the second side and the borders of the first side are of a second color. This is how Devant sets up the Jacquard loom to make the Edge® towel. The Examiner mischaracterizes the Hobson reference in this regard. What Hobson teaches is the weaving of two separate towels, as stated above.

Claims 21 continues by stating that the first side is sheared to a height of about 75 to about 95% of the height of side two, and blooming said one side so that a graphic impression can be applied more intensely. Neither Hobson nor Carpenter et al. disclose this.

Lastly, claim 21 calls for forming a graphic impression in the central area on one of the sides. Neither Hobson nor Carpenter form a graphic impression in the central area of a woven product.

By utilizing the color scheme in claim 21, other objects of the invention can be achieved. This article employs dobby weaving to create an article with a central light colored area, surrounded by a dark border. Due to the dobby process and set up, the

reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the applicant to apply the printed image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color. This scheme is present in claim 21, and is also further defined in claim 23.

At the bottom of page 4, the Examiner states what is well known in patent law, that matters relating to ornamentation only, which have no mechanical function, cannot be relied upon to patentably distinguish the claimed invention from the prior art. However, the Examiner concludes that the only features of the present invention that deserve patentable weight include, the woven towel having different color yarns which create a first pattern on the first side and an inverse pattern on the reverse side, and a graphic impression. This conclusion only demonstrates that the Examiner has never understood, and still does not understand, the technology of the present invention. As has been repeatedly stated, the dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process, like the Carpenter disclosure. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one.

Attached Table 1 sets forth the elements of claim 21 views these with respect to the rejection of Hobson and Carpenter et al.

Issue 1b. CLAIM 23 (37 C.F.R. § 41.37(c)(1)(vii) subheading)

Claim 23 is separately patentable due to the further defined color scheme's increased effectiveness at masking bleed through and misalignment of applied images.

Issue 2 — The rejection of claims 21-27 under 35 U.S.C. §103(a) as being unpatentable over Sherrill et al. (U.S. Pat. No. 3,721,273), in view of Applicant's Admissions.

Sherrill et al. disclose a terry towel having one face cotton terry, and the opposite face rayon terry. As can be seen in the drawings of Sherrill, the first side (Fig. 1) has printed thereon patterns creating a window area with a central design, and a border region having additional printed designs thereon. The second side (Fig. 2) is entirely of cotton terry.

The Examiner relies on the Applicant's disclosure on page 2 of the Application as filed, to disclose that it is well known in the art to use dobby or cam looms to create thick, luxurious pile fabrics having velour or looped terry structure, that employs two different colors in the linear band. Furthermore, the Examiner relies on Applicant's disclosure to state that it is well known to print designs on the resulting articles. However, the Examiner does not cite, and the Application does not contain any statement that would make up the deficiencies of Sherrill, namely there is no disclosure in the application's background as to the specific weave structure as employed by the Applicant in the current invention.

The Examiner states that Sherrill does not teach using the different colored warp yarns in the terry fabric, but instead cites the Applicant's disclosure that it is well known to create dobby woven products using two different colors in the linear band of the warp filament. The Examiner then concludes that it would be obvious to one of ordinary skill in the art to use the Applicant's multi-colored towel as the terry cloth towel of Sherrill et al. This rejection is respectfully traversed for the following reasons.

Issue 2a. CLAIM 21 (37 C.F.R. § 41.37(c)(1)(vii) subheading)

Claim 21 is the only independent claim. Attached Table 1 sets forth the elements of claim 21 and views these with respect to the rejection of Sherrill et al. v. Applicant's Admissions. Claim 21 starts by calling for weaving a towel on a dobby loom using at least two different colors. Sherrill makes no disclosure as to the color of the yarns.

Claim 21 calls for a border having a first color that is woven adjacent each edge on one side of the towel. Sherrill et al. appear at first glance to have such a border, however, such is not the case. The Sherrill towel is woven such that the first side is entirely rayon terry, while the second side is entirely cotton terry. Therefore, the border of Sherrill as shown in Figure 1 is defined by a printed pattern (reference number 25). A printed border belies the Applicant's invention, which requires a woven border for proper masking of misaligned and intense graphic printing. Applicant's admissions merely state that

Claim 21 continues by stating that a border having a second color is adjacent each edge of the towel on its other side. Sherrill et al. teach that the reverse side, as seen in Figure 2 of Sherrill et al., is entirely of plain cotton terry. The Sherrill et al. towel is specifically manufactured so that the rayon terry piles are entirely on one side of the towel and the cotton terry piles are entirely on the other side.⁶ Sherrill et al. teach printing on the rayon fibers only, since they have an increased absorption of the dyes, as is well known in the art. The printed pattern would therefore appear only on one side, the rayon side, of the towel. The reverse side of the towel, the cotton side, would not have the alternate color pattern as claimed and required by the Applicant.

Claim 21 continues by stating that the towel has a central area within the borders on both sides of the towel. While there is central area in any two-dimensional product, this central area claimed in claim 21 must be within the borders. Sherrill et al. do teach a central area, but the subsequent printing, not the weaving as required by the Applicant, creates it.

⁶U.S. Pat. No. 3,721,273, col. 2, lines 52-59.

Claim 21 continues by stating that the central area on one side is in a first color, while the central area on the other side is in a second color. The towel of Sherrill et al. discloses a single color rayon first side, and a single color cotton second side, most likely the same color. Sherrill et al. does not teach that the color on a towel is such that the central area on a first side and the borders on the second side are of one color, while the central area of the second side and the borders of the first side are of a second color. This is how Devant sets up the Dobby loom to make the Edge® towel.

Claim 21 continues by stating that the first side is sheared to a height of about 75 to about 95% of the height of side two, and blooming said one side so that a graphic impression can be applied more intensely. Sherrill et al. disclose cutting the rayon fabrics on the first side, but does not disclose the pile height. Sherrill et al. do not disclose any subsequent blooming.

Lastly, claim 21 calls for forming a graphic impression in the central area on one of the sides. Sherrill et al. disclose this feature.

The Examiner states that it is irrelevant that the Sherrill et al.'s borders are printed onto the towel. This is simply untrue. Sherrill et al. teach a towel woven from a rayon thread and a cotton thread. The towel is specifically manufactured so that the rayon terry piles are on one side of the towel and the cotton terry piles are on the other side. Sherrill et al. teach printing on the rayon fibers only, since they have an increased absorption of the dyes, as is well known in the art. Therefore, the printing would appear only on one side of the towel. The reverse side of the towel would not have the alternate color pattern as claimed and required by the Applicant. Therefore, unlike the present invention, bleed through is a potential problem for Sherrill et al.

The Examiner states that the final product would be produced whether the border regions were woven into the fabric or printed onto the finished textile. By declaring that it regions were woven into the fabric or printed onto the finished textile. By declaring that it is irrelevant whether the towel's border is woven or dyed, it would seem that the Examiner

has either mischaracterized or does not understand the merits of the invention. Printing is known to interfere with the absorption of the towel. The printing dye fills up the nooks and crannies of a fiber and coats it such that it is incapable of absorbing liquids. To print a majority of the surface area, using synthetic non-absorbing rayon makes an aesthetic but useless towel.

By utilizing the color scheme in claim 21, other objects of the invention can be achieved. This article employs dobby weaving to create an article with a central light colored area, surrounding by a dark border. Due to the specific dobby process and set up, the reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border surrounding the light central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment and monitoring that is mandatory in the preprinted filament process. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the printed design on the light colored central area of side one. This allows the applicant to apply the printed image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color. This scheme is present in claim 21, and is also further defined in claim 23.

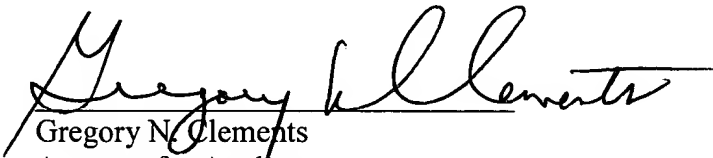
As already stated, the Examiner does not cite, and the Application does not contain any statement or admissions that would make up the deficiencies of Sherrill. Namely, there is no disclosure in the application's background as to the specific weave structure as employed by the Applicant in the current invention. The Applicant merely states that it is well known in the art to use dobby or cam looms to create thick, luxurious pile fabrics having velour or looped terry structure, that employs two different colors in the linear band, and that it is well known to print designs on the resulting articles. These statements are merely introductory to defining the problem that exists in the prior art: namely that of the bleed through in vibrant printing, and the difficulty and expense of utilizing more than one color in a linear band.

From this scant recitation, the Examiner assumes obviousness. As already pointed out, there are numerous structural limitations claimed by the Applicant that are not taught by Sherrill. This introductory language by the Applicant simply does not make up the deficiencies of the Sherrill reference.

Issue 2b. CLAIM 23 (37 C.F.R. § 41.37(c)(1)(vii) subheading)

Claim 23 is separately patentable due to the further defined color scheme's increased effectiveness at masking bleed through and misalignment of applied images. Neither of these features are disclosed in any of the prior art references.

Respectfully submitted,

A handwritten signature in black ink, reading "Gregory N. Clements", with a horizontal line drawn across the signature.

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Attorney Docket 3129

TABLE 1

Claim 21	Hobson v. Carpenter v. Sherrill
Weaving a towel on a Jacquard loom using at least 2 different colors.	Hobson teaches a Dobby loom, Col. 2, line 18
	Carpenter uses a Jacquard loom, Item 26
	Sherrill does not disclose weaving loom.
Such that a border having a 1 st color is woven adj. each edge on one side thereof.	Neither Hobson nor Carpenter has this. Sherrill has a border printed border.
And a border having a second color is woven adj. each edge of said towel on the other side.	Neither Hobson nor Carpenter nor Sherrill has this.
Said towel having a central area woven within the borders on both sides.	There is a central area but no borders. Sherrill has a central area on only one side.
Said central area on other side is woven with 1 st color.	There is a central area but no borders.
Said central on said one side is woven in a 2 nd color.	There is a central area but no borders. Sherrill's border is same color as central area, and is printed.
Shearing said one side to 75-95% pile height of said second side, and blooming said one side.	Neither Hobson nor Carpenter nor Sherrill has this.
Forming a graphic impression in said central area on said one side.	Neither Hobson nor Carpenter has this. Sherrill discloses this.
Claims 22 – 26 not disclosed by Hobson or Carpenter.	Claim 27 – Hobson mentions shearing (Col. 2, line 33) not blooming. Sherrill discloses this.

CLAIMS APPENDIX (37 C.F.R. § 41.37(c)(1)(viii)

The claims on appeal appear as follows:

21. A towel having a graphic impression, produced by:

weaving a towel on a Dobby loom using at least two different colors of yarn, such that a border having a first color is woven adjacent each edge of said towel, on one side thereof, and a border having a second color is woven adjacent of said towel on the other side, said towel having a central area woven within said borders on both said one side and said other side, said central area on said other side is woven with said first color, said central area on said one side is woven with said second color,

shearing said one side to a height of about 75 to about 95% of the height of said other side;

blooming said one side such that a graphic impression can be intensely applied thereto;

and forming a graphic impression in said central area on said one side, wherein said towel retains its preprinted water absorbency characteristics.

22. The product of claim 21, wherein said forming is by screen printing, image dyeing, digital imaging, or heat transferring.

23. The product of claim 21, wherein said border on said one side and said central area on said other side having said woven first color is a dark color, whereas said border on said other side and said central area on said one side is a light color.

24. The product of claim 23, wherein said graphic impression has at least two different colors, neither being said first nor said second color.

25. The product of claim 23, wherein said border shape is selected from the class of rectangular shape, circular shape, oval shape, square shape, and irregular shape.

26. The product of claim 25, wherein said border is solid or a pattern.
27. The product of claim 26, wherein said pattern is selected from the class consisting of stripes, dots, names, silhouettes of sport players, animal shapes, corporate logos, or university mascots.

EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))

1. No additional evidence is presented beyond what is contained within the record.

RELATED PROCEEDINGS APPENDIX (37 C.F.R. § 41.37(c)(1)(x))

1. Attached hereto is a copy of the Board of Patent Appeals and Interferences' decision in related Application Serial No. 09/747,529 dated July 29, 2004, reversing the Examiner's previous rejection of the current claim set and affirming the Applicant's position regarding the Examiner's rejection

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES M. SHEPPARD, JR.

Appeal No. 2004-1029
Application No. 09/747,529

HEARD: July 14, 2004

MAILED

JUL 29 2004

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before FRANKFORT, MCQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 21 through 36, all of the claims remaining in this application. Claims 1 through 20 have been canceled.

As noted on page 1 of the specification, appellant's invention relates to both a textile article and a method of making the textile article, wherein the textile article is a two-sided Jacquard woven textile product (e.g., a towel) with a

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graphic impression on at least one side thereof. The method of making the article as described in the specification comprises the steps of a) providing a two-sided Jacquard woven textile wherein the front side of the textile or towel has, for example, a dark color border adjacent each edge and a light color area within the borders, while the reverse side has a light color border adjacent each edge and a dark color area within and surrounded by the borders, and b) subsequently transferring a graphic impression onto the towel, preferably in the light color central area of the front side, by screen printing, image dyeing, digital imaging, or heat transferring. Independent claims 21 and 29 are representative of the subject matter on appeal and a copy of those claims can be found, respectively, in the Appendix to the examiner's answer and the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hobson	4,259,994	Apr. 7, 1981
Carpenter et al. (Carpenter)	5,983,952	Nov. 16, 1999

Claims 21 through 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hobson in view of Carpenter.

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Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejection, we refer to the examiner's answer (mailed August 27, 2003) and to appellant's brief (filed June 25, 2003) and reply brief (filed October 6, 2003) for a full exposition thereof.

OPINION

Having carefully reviewed the obviousness issue raised in this appeal in light of the record before us, we have come to the conclusion that the examiner's rejection of claims 21 through 36 under 35 U.S.C. § 103 will not be sustained. Our reasoning in support of this determination follows.

After a careful evaluation of the teachings and suggestions to be derived by one of ordinary skill in the art from the patterned terry fabric and its method of manufacture on a tappet or dobby mechanism as described in Hobson, and the Jacquard weaving system and method set forth in Carpenter for ensuring automatic alignment of a printed pattern with a woven pattern on a textile fabric as that fabric is being formed, it is our opinion that the examiner has failed to meet her burden of

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establishing a *prima facie* case of obviousness. More particularly, we are of the view that the examiner's reasoning in support of the obviousness rejection before us on appeal (as expressed on pages 3-7 of the answer) is based almost entirely on speculation and conjecture, and with regard to the basic structure and color scheme of the towel defined in appellant's claim 21 and the textile of claim 29 on appeal, relies entirely upon appellant's own disclosure and teachings to supply that which is lacking in the applied prior art references.

Basically, we share appellant's views as aptly expressed in the brief and reply brief concerning the examiner's attempted combination of the Hobson and Carpenter patents, the failure of either Hobson or Carpenter to disclose borders adjacent each edge of a towel or textile product and a central area within and surrounded by the borders, which central area on one side of the towel or textile product receives a graphic impression, and the failure of either of the applied patents to teach or suggest the particular color arrangement of the borders and central areas required in the claims on appeal. We are also in agreement with appellant concerning the examiner's bald conclusion that "it would have been obvious to one of ordinary skill in the art to

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choose various printed designs, as well as choose where to place the printed image on the Hobson product . . ." (answer, pages 3-4), so as to result in a towel or textile like that claimed by appellant. Since neither the applied references nor the examiner provides an adequate factual basis to establish that the towel of claim 21 on appeal or the textile product of appellant's claim 29 would have been obvious to one of ordinary skill in the art at the time of appellant's invention, it follows that we will not sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a).

In addition, we note that the examiner's rejection of claims 22 through 28 and 30 through 36 under 35 U.S.C. § 103(a) based on the combination of Hobson and Carpenter, which claims respectively depend from independent claims 21 and 29, will likewise not be sustained.

Since we have determined that the examiner has failed to establish a prima facie case of obviousness with regard to the claimed subject matter before us on appeal, we find it unnecessary to comment on appellant's evidence of secondary


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considerations relating to commercial success, long felt need and copying by others.


The decision of the examiner to reject claims 21 through 36 under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT
Administrative Patent Judge


JOHN P. MCQUADE
Administrative Patent Judge

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JENNIFER D. BAHR
Administrative Patent Judge

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